

<b>TO:</b>  <b>Commissioner of Patents</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b> or <b>Commissioner of Trademarks</b> <b>P.O. Box 1451</b> <b>Alexandria, VA 22313-1451</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>  <b>SOLICITOR</b> <b>JAN 14 2008</b> <b>U.S. PATENT &amp; TRADEMARK OFFICE</b>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following

DOCKET NO. <b>08-cv-00023-ZLW-CBS</b>	DATE FILED <b>01/04/2008</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF  <b>WINE MASTER CELLARS, LLC</b>		DEFENDANT  <b>NORMAN JACQUES COUTURE, ET AL.</b>
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1 <b>6,991,117</b>		<b>Please see copy of Complaint attached hereto</b>
2		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK  <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK	DATE
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E. Award to Wine Master its attorneys' fees and all of Wine Master's costs and expenses of litigation, as well as treble damages provided under 17 U.S.C. § 505 and/or 35 U.S.C. § 285.

F. Grant to Wine Master such other and further relief as the Court may deem just, proper and equitable under the circumstances.

**JURY DEMAND**

Wine Master demands a trial by jury of all issues so triable in this action.

Respectfully submitted this 4th day of January, 2008,

GREENBERG TRAURIG, LLP

s/John R. Posthumus/

John R. Posthumus

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ATTORNEYS FOR PLAINTIFF

FILED  
U.S. DISTRICT COURT  
DISTRICT OF COLORADO

2008 JAN -4 PM 2:24

GREGORY C. LANGHAM  
CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **'08 - CV - 00023** - ZLW - CBS BY \_\_\_\_\_ DEP. CLK

WINE MASTER CELLARS, LLC  
a Colorado limited liability company,

Plaintiff

v.

NORMAN JACQUES COUTURE,  
a resident of Connecticut, and

MAR-ELLE ENTERPRISES, INC.,  
d.b.a. INVISIBLE VINEYARDS  
a Connecticut corporation,

Defendants.

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**COMPLAINT AND JURY DEMAND**

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Plaintiff Wine Master Cellars LLC ("Wine Master") for its Complaint against Defendants Norman J. Couture ("Mr. Couture") and Mar-elle Enterprises, Inc. ("Mar-elle") (collectively "Invisible Vineyards" or "Defendants"), allege as follows.

**NATURE OF THE ACTION**

1. In this action, Wine Master seeks injunctive and monetary relief for acts of patent infringement under the laws of the United States, Title 35, United States Code; and copyright infringement under the laws of the United States, Title 17, United States Code.

### **PARTIES**

2. Wine Master is a Colorado limited liability company having a principal place of business at 2000 S. Dahlia St., Suite 300, Denver, Colorado 80222.

3. Upon information and belief, Mr. Couture resides at 11 South Court, Meriden, CT 06450 and is the President and Treasurer of Mar-elle. Upon information and belief, Mr. Couture personally controls and directs the activities of Defendant Mar-elle.

4. Upon information and belief, Mar-elle is a Connecticut corporation located in and doing business from the home of Mr. Couture at 11 South Court, Meriden, CT 06450.

5. On information and belief, Norman J. Couture, and Mar-elle Enterprises, Inc. are doing business under the trade name "Invisible Vineyards."

### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331 and § 1338(a).

7. This Court has personal jurisdiction over Defendants in this action. Venue is proper in this District under 28 U.S.C. § 1391(b). Defendants' patent and copyright infringement has damaged a company whose business is centered in Colorado. Defendants operate a website on the Internet at <http://invisiblevineyards.com/> ("the Invisible Vineyards Website") that is accessible to consumers and potential consumers in the State of Colorado. Defendants offer for sale infringing wine racks on the Invisible Vineyards Website. Additionally, Defendants have published infringing text on the Invisible Vineyards Website promoting the sale of the infringing wine racks. Finally, Defendants have solicited sales and distributor arrangements in the State of Colorado concerning the infringing wine racks.

## **GENERAL ALLEGATIONS**

### **Wine Master's Business and Intellectual Property Rights**

8. Wine Master sells its patented wine rack system under the trademark VINTAGEVIEW® ("the VintageView products"). Wine Master is the owner of U.S. Patent Number 6,991,117 ("the '117 Patent"). Wine Master is the owner of all right, title and interest in and to the '117 Patent. A copy of the '117 Patent is attached as Exhibit A. The VintageView products are protected by the '117 Patent, which issued on January 31, 2006.

9. The VintageView products virtually disappear when installed and stocked with wine bottles, creating the illusion that the bottles are suspended in air. The VintageView products can hold the wine bottle label facing forward such that the wine racks display the "art of the label." A copy of a representative portion of Wine Master's 2007 catalog of VintageView products is attached as Exhibit B.

10. Wine Master sells the VintageView products both directly to consumers throughout the United States, including the State of Colorado, through its website, and indirectly through its authorized distributors.

11. Copies of portions of Wine Master's website are attached as Exhibit C. Wine Master is the owner of all right, title and interest in and to the copyright for the Wine Master website text, including Copyright Registration No. TX0006196537.

### **Defendants' Business and Infringing Products**

12. On information and belief, Defendants commenced selling, in early December, 2007, wine rack products ("the Invisible Vineyard products") on the Invisible Vineyards Website. Portions of the Invisible Vineyards Website are attached as Exhibit D.

13. On information and belief, the Invisible Vineyard products infringe one or more claims of the '117 Patent. The Invisible Vineyards products are shown in pictures on the Invisible Vineyard Website, which are shown in Exhibit D.

14. Defendants' infringement has not been innocent and was willfully performed with full knowledge of the '117 Patent. On July 5, 2007, Mr. Couture personally ordered thirty VintageView racks from Wine Master's office in Denver. Mr. Couture represented to the salesperson at Wine Master that Mr. Couture was a restaurant designer. Mr. Couture had the racks delivered to his home address and Mar-elle's business address at 11 South Court, Meriden, CT 06450. A copy of the invoice for this sale ("the Invoice") is attached as Exhibit E.

15. The VintageView products purchased by Mr. Couture were marked with the '117 Patent, *i.e.*, "Patent No. 6,991,117". The same legend was marked on the packaging of the VintageView products purchased by Mr. Couture. In addition, the Invoice included with the VintageView products was marked with "U.S. PATENT #6,991,117".

16. On information and belief, Mr. Couture used the VintageView products he purchased to design and build Defendants' infringing Invisible Vineyards products.

17. On information and belief, Mr. Couture has filed a patent application on or before December 10, 2007 based on his infringing Invisible Vineyards products.

18. On information and belief, Mr. Couture copied text describing the VintageView products and their benefits from the Wine Master website. The text on Wine Master website was and continues to be accessible to Mr. Couture. As one example of copied text, the text on Defendants' Invisible Vineyards Website, under the "Why Invisible Vineyards" heading, is

substantially similar to the text on the Wine Master website, which is under a “Why VintageView” heading.

19. In December, 2007, Mr. Couture emailed several dealers of Wine Master’s VintageView products at the dealers’ offices in Colorado. Through the emails, Mr. Couture solicited each of the Wine Master dealers to become a distributor of the Invisible Vineyards products. Mr. Couture also directed each dealer to view the Invisible Vineyards Website (<http://invisiblevineyards.com/>). Copies of some of the emails sent are attached as Exhibit F.

#### **FIRST CLAIM FOR RELIEF**

(Patent Infringement)

20. Wine Master repeats and realleges the allegations contained in the foregoing paragraphs 1-19. This is a claim for violation of the United States Patent laws, 35 U.S.C. §§ 101 *et seq.*

21. Wine Master has complied in all respects with 35 U.S.C. §§ 101 *et seq.*, and has secured the exclusive rights and privileges in and to the ‘117 Patent (“Wine Master Patent Rights”).

22. Invisible Vineyards makes the infringing Invisible Vineyards products in the United States.

23. Invisible Vineyards offers for sale the infringing Invisible Vineyards products on the Invisible Vineyards Website (<http://invisiblevineyards.com/>).

24. Invisible Vineyards has solicited sales of the Invisible Vineyards products through emails to Wine Master dealers in Colorado.

25. On information and belief, Invisible Vineyards sells and has sold the infringing Invisible Vineyards products through the Invisible Vineyards Website and through dealers.

26. Invisible Vineyards' conduct infringes the Wine Master Patent Rights.

27. On information and belief, Wine Master alleges that, as a direct and proximate result of its wrongful conduct, Invisible Vineyards has realized and continues to realize profits and other benefits rightfully belonging to Wine Master. Accordingly, Wine Master seeks an award of damages pursuant to 35 U.S.C. § 284.

28. On information and belief, Invisible Vineyards has willfully engaged in, and is willfully engaging in, the acts complained of with oppression, fraud, and malice, and in conscious disregard of the Wine Master's rights. Wine Master is, therefore, entitled to a trebling of damages as allowable under 35 U.S.C. § 284.

29. Invisible Vineyards' infringing conduct has also caused and is causing substantial and irreparable injury and damage to Wine Master in an amount not capable of determination, and, unless restrained, will cause further irreparable injury. Wine Master has no adequate remedy at law. Wine Master is, therefore, entitled to both immediate and permanent injunctions against Invisible Vineyards' infringement pursuant to 35 U.S.C. § 283.

## **SECOND CLAIM FOR RELIEF**

(Copyright Infringement)

30. Wine Master repeats and realleges the allegations contained in the foregoing paragraphs 1-29. This is a claim for violation of the United States Copyright laws, 17 U.S.C. §§ 101, *et seq.*

31. Wine Master is the owner of all right, title and interest in and to the copyright for the Wine Master website materials (Copyright Registration No. TX0006196537), which was published as early as January 6, 2005.



32. Wine Master has complied in all respects with 17 U.S.C. §§ 101 *et seq.*, and has secured the exclusive rights and privileges in and to the copyrights of the above-referenced work ("Wine Master Copyrights").

33. Invisible Vineyards publishes content on the Invisible Vineyards Website that infringes the Wine Master Copyrights.

34. Invisible Vineyards' conduct violates the exclusive rights belonging to Wine Master as owner of the Wine Master Copyrights, including without limitation Wine Master's rights under 17 U.S.C. § 106.

35. On information and belief, Wine Master alleges that, as a direct and proximate result of Invisible Vineyards' wrongful conduct, Invisible Vineyards has realized and continues to realize profits and other benefits rightfully belonging to Wine Master. Accordingly, Wine Master seeks an award of damages, costs, and attorney's fees pursuant to 17 U.S.C. §§ 504 and 505.

36. Invisible Vineyards' infringing conduct has also caused and is causing substantial and irreparable injury and damage to Wine Master in an amount not capable of determination, and, unless restrained, will cause further irreparable injury. Wine Master has no adequate remedy at law.

37. On information and belief, Invisible Vineyards has willfully engaged in, and is willfully engaging in, the acts complained of with oppression, fraud, and malice, and in conscious disregard of the Wine Master's rights. Wine Master is, therefore, entitled to the maximum statutory damages allowable.

WHEREFORE, Wine Master requests judgment against Defendants, granting to Wine Master the following:

A. Grant a preliminary and permanent injunction restraining and enjoining all Defendants, and any principals, agents, servants, employees, successors and assigns of and all those in privity, concert or participation with Defendants from:

- i. infringing any of the Wine Master Patent Rights;
- ii. infringing any of the Wine Master Copyrights.

B. Find that All Defendants have engaged in patent infringement by the acts complained of herein in violation of federal law.

C. Find that All Defendants have engaged in copyright infringement by the acts complained of herein in violation of federal law.

D. Award to Wine Master monetary damages in an amount to be fixed by the Court in its discretion as just, including all of Defendants' profits or gains of any kind resulting from Defendants' unlawful conduct, said amount to be trebled, and exemplary (and punitive) damages in view of the intentional nature of the acts complained of herein, including:

- i. Wine Master's actual damages, including Defendants' profits, for patent infringement pursuant to 35 U.S.C. § 284; and
- ii. Wine Master's actual damages, including Defendants' profits, for copyright infringement pursuant to 17 U.S.C. § 504(b); or in the alternative, statutory damages pursuant to 17 U.S.C. § 504(c).